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FEDERAL TRADE COMMISSION

**Agency Information Collection Activities;
Proposed Collection; Comment Request; Extension**

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend through June 30, 2016, the current Paperwork Reduction Act (“PRA”) clearance for the FTC’s enforcement of the information collection requirements in its regulation “Duties of Furnishers of Information to Consumer Reporting Agencies” (“Information Furnishers Rule”), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (“CFPB”) of the furnisher provisions (subpart E) of the CFPB’s Regulation V regarding other entities. That clearance expires on June 30, 2013.

DATES: Comments must be filed by [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Information Furnishers Rule, PRA Comment, P135407,” on your

comment and file your comment online at

<https://ftcpublishcommentworks.com/ftc/infofurnishersrulepra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Attorney, Division of

Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326-2575, 600 Pennsylvania Ave., NW, Room NJ-8100, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹ The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB most of the FTC’s rulemaking authority for the furnisher provisions of the Fair Credit Reporting Act (“FCRA”),² on July 21, 2011.³ For certain other portions of the FCRA, the FTC retains its rulemaking authority.⁴

The FTC retains rulemaking authority for its Information Furnishers Rule solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.⁵

In addition, the FTC retains its authority to enforce the furnisher provisions of the FCRA and the FTC and CFPB rules issued under those provisions. Thus, the FTC and CFPB have overlapping enforcement authority for many entities subject to the CFPB rule and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 15 U.S.C. 1681 *et seq.*

³ Dodd-Frank Act, § 1061. This date was the “designated transfer date” established by the Treasury Department under the Dodd-Frank Act. *See* Dep’t of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date*, 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, § 1062.

⁴ The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for FCRA sections 615(e) (“Red Flag Guidelines and Regulations Required”) and 628 (“Disposal of Records”). *See* 15 U.S.C. 1681s(e); Public Law 111-203, section 1088(a)(10)(E). Accordingly, the Commission retains full rulemaking authority for its “Identity Theft Rules,” 16 CFR Part 681, and its rules governing “Disposal of Consumer Report Information and Records,” 16 CFR Part 682. *See* 15 U.S.C. 1681m, 1681w.

⁵ *See* Dodd-Frank Act, § 1029(a), (c).

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the furnisher provisions (subpart E) of CFPB's Regulation V.⁶ Contemporaneous with that issuance, the CFPB and FTC had each submitted to OMB, and received its approval for, the agencies' respective burden estimates reflecting their overlapping enforcement jurisdiction, with the FTC supplementing its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. The discussion below continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

Burden statement:

Under the PRA, 44 U.S.C. 3501-3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. "Collection of information" includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Under section 660.3 of the FTC's Information Furnishers Rule⁷ and section 1022.42 of the CFPB Rule,⁸ furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a consumer reporting agency ("CRA").⁹ Section 660.4 of the FTC Rule and section 1022.43 of the CFPB Rule require that entities which furnish information about

⁶ 76 FR 79308 (Dec. 21, 2011).

⁷ 16 CFR Part 660.

⁸ 12 CFR Part 1022.

⁹ The rule defines a "furnisher" as an entity that furnishes information relating to consumers to one or more CRAs for inclusion in a consumer report, but provides that an entity is not a furnisher when it: Provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA; is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

consumers to a CRA respond to direct disputes from consumers. These provisions also require that a furnisher notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant (“F/I dispute”).

The FTC’s currently cleared burden totals, post-adjustment for the effects of the Dodd-Frank Act, are 61,034 hours with \$2,440,575 in associated labor costs.¹⁰ Estimated capital/non-labor costs remain listed as \$0 because Commission staff had reiterated its belief that the Rule imposes negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and/or equipment (e.g., offices and computers) for the information collections within the Rule.

The past burden analysis, tied to when the Rule was newly promulgated, accounted for one-time burdens particular to the first year of the Rule’s implementation and a relatively greater weighting of burden within that first year for certain recurring obligations under the Rule. Now, however, with several years having passed since inception, FTC staff’s updated estimates reflect solely the remaining recurring burdens, as further reduced for the educational curve and diminishing measures needed to maintain compliance with the Rule.

Thus, using solely the currently cleared estimates (post-adjustment for the effects of the Dodd-Frank Act) of the number of applicable motor vehicle dealers and their assumed recurring disclosure burdens, the FTC proposes the following:

Estimated number of respondents: 3,986¹¹

¹⁰ OMB Control No. 3084-0144.

¹¹ Given the broad scope of furnishers, it is difficult to determine precisely the number of them that are subject to the FTC’s jurisdiction. Nonetheless, Commission staff estimated that the regulations affect approximately 6,133 such furnishers. *See* 74 FR 31484, 31505 n. 56 (July 1, 2009 FTC and Federal financial agencies final rules). It is equally difficult to determine precisely the number of motor vehicle dealers that furnish information related to consumers to a CRA for inclusion in a consumer report. For purposes of estimating its motor vehicle dealer

Section 660.3 of FTC Rule/Section 1022.42 of CFPB Rule:

A. Burden Hours

Yearly recurring burden of 2 hours for training¹² to help ensure continued compliance regarding written policies and procedures for the accuracy and integrity of the information furnished to a CRA about consumers.

$$3,986 \text{ respondents} \times 2 \text{ hours for training} = \mathbf{7,972 \text{ hours}}$$

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use managerial and/or professional technical personnel to train company employees in order to foster continued compliance with the information collection requirements in the Information Furnishers Rule and the furnisher provisions of Regulation V.

$$7,972 \text{ hours} \times \$47.73^{13} = \mathbf{\$380,503}$$

furnisher carve-out, the FTC has assumed that 30% of the 6,133 furnishers, or 1,840 furnishers, constitute the number of motor vehicle dealers over which the FTC retains exclusive jurisdiction under the Dodd-Frank Act. To derive this 30% estimate, Commission staff divided an estimated number of car dealers -- 55,417 (based on industry data for the number of franchise/new car and independent/used car dealers) by 199,500 (Commission staff's PRA estimate of the number of entities that extend credit to consumers subject to FTC jurisdiction under the FCRA, pre-Dodd-Frank, for the Risk-Based Pricing regulations, as detailed at 75 FR 2724, 2748 n.18 (Jan. 15, 2010)). This came out to 28%. Staff increased this amount to 30% to account for other motor vehicle dealer types (motorbikes, boats, other recreational) also covered within the definition of "motor vehicle dealer" under section 1029(a) of the Dodd-Frank Act. The resulting apportionment for motor vehicle dealers was subtracted from the base figure (6,133) to determine the net amount (4,293) subject to 50:50 apportionment (approximately 2,146 each) between the FTC and CFPB. Thus, 1,840 motor vehicle dealers + 2,146 other entities = 3,986 respondents for the FTC's burden calculations.

¹² 74 FR at 31505.

¹³ http://www.bls.gov/news.release/archives/ocwage_03272012.pdf; "Occupational Employment and Wages--May 2011," Bureau of Labor Statistics, U.S. Department of Labor, released March 2012, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2011") (hereinafter, "BLS Table 1"). See mean hourly wage for "Training and Development Managers."

Section 660.4 of FTC Rule/Section 1022.43 of CFPB Rule:

A. Burden Hours

No recurring burden other than that necessary to prepare and distribute F/I notices (estimate: 14 minutes per notice¹⁴).

1. 21,720 F/I disputes (estimated number received by furnishers under the FTC's jurisdiction¹⁵)
2. "Carve-out" to FTC: assumed 4%¹⁶
= 869 F/I disputes
3. 21,720 F&I disputes - 869 "carve-out" = 20,851 respondents for CFPB-FTC split
 - a. Divided by 2 = 10,425 F/I disputes, co-jurisdiction estimate
 - b. CFPB: 10,425 F/I disputes
 - c. FTC: 869 "carve-out" + 10,425 additional F/I disputes = 11,294 F/I disputes
 - d. FTC: 11,294 F/I disputes x 14 minutes each = **2,635 hours**

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use skilled administrative support personnel to provide the required F/I dispute notices to consumers.

$$2,635 \text{ hours} \times \$20.89^{17} = \mathbf{\$55,045}$$

¹⁴ 74 FR at 31505.

¹⁵ *Id.* at 31506 n. 58.

¹⁶ FTC staff believes that 4% is a reasonable estimate based on recent data. See "Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus handle consumer data," December 2012, pp. 14, 29, 31, 34. The CFPB report noted that almost 40% of all consumer disputes at the nationwide CRAs, on average, can be linked to collections. It stated that collection trade lines generate significantly higher numbers of consumer disputes than other types of trade lines – specifically, four times higher than auto. These figures seem to suggest that almost 10% of all consumer disputes at the nationwide CRAs, on average, can be linked to auto. When the FTC issued its final Rule, FTC staff estimated that 40% of direct disputes would result in the sending of F/I dispute notices. See 74 FR 31506 n.58. The FTC's estimate of 4% is based on taking forty percent of the 10% of all consumer disputes at the nationwide CRAs, on average, linked to auto loans.

¹⁷ See BLS Table 1. This figure represents an average drawn from mean hourly wages of potentially analogous

Thus, total estimated burden under the above-noted regulatory sections is 10,607 hours and \$435,548.

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 60 days from FEDERAL REGISTER date of publication]. Write “Information Furnishers Rule, PRA Comment, P135407” on your comment. Your comment – including your name and your state - will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card

employee types: first-line supervisors of office support (\$25.16); accounting and auditing clerks (\$17.37); brokerage clerks (\$21.06); eligibility interviewers, government programs (\$19.95).

number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential” as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).¹⁸ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/infofurnishersrulepra>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that Website.

If you file your comment on paper, write “Information Furnishers Rule, PRA Comment, P135407” on your comment and on the envelope , and mail or deliver it to the following address:
Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania

¹⁸ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at www.ftc.gov to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 60 days from FEDERAL REGISTER date of publication]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka
Acting General Counsel.

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